

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-147862-10

Date:

May 18, 2011

Legend

Parent

Subsidiary =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Fiscal Year End =

Company Official =

Team Manager

Dear :

This responds to your letter dated November 22, 2010, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and the members of its affiliated group to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as “the Election”), for the taxable year ending Date 8. The material information submitted for consideration is summarized below.

Parent is a corporation that was formed on Date 2. On Date 3, Parent acquired all of the stock of Subsidiary (the “Date 3 Acquisition”). Prior to the Date 3 Acquisition, Subsidiary was the common parent of a consolidated group with a fiscal year ending Fiscal Year End. The Date 3 Acquisition terminated the Subsidiary consolidated group. Notwithstanding that the Date 3 Acquisition terminated the Subsidiary consolidated group, Subsidiary and its subsidiaries continued to file a consolidated return as if the Subsidiary group had not terminated, that is, as a consolidated group with Subsidiary as the common parent with a taxable year ending on Date 7 (hereinafter, this return may be referred to as the “Incorrect Subsidiary Date 7 Return”). Parent filed its own separate return using a calendar year taxable year.

An election for the Parent affiliated group to file a consolidated return for its taxable year ending Date 8 was due on the last day prescribed by law (including extensions of time) for filing Parent’s return but for various reasons a valid Election was not filed. The period of limitations on assessment under § 6501(a) for Parent’s taxable year ending Date 8 and for any subsequent year will not expire prior to Date 10.

Parent and Subsidiary have represented that they did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for the Parent affiliated group to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent and Company Official explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted

under § 301.9100-1 until Date 9 for Parent to file the Election, by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each subsidiary member for the taxable year ending Date 8. Parent, Subsidiary, and its subsidiaries must amend their previously filed returns, in the manner described in the paragraph below, and must attach a copy of this letter to such returns. Alternatively, if such returns are filed electronically, the requirement of attaching a copy of this letter to the returns may be satisfied by attaching a statement to the returns that provides the date and control number of the letter ruling. In addition, a copy of the amended returns should be sent directly to Team Manager.

The Incorrect Subsidiary Date 7 Return, and any subsequent return filed by Subsidiary as if it were the common parent of its own group must be amended to report the income, gain, deduction, loss, and credit for each corporation included on the Incorrect Subsidiary Date 7 Return or subsequent return filed by Subsidiary on the proper return. That is, the items from Date 1 through Date 3 must be reported on a final consolidated return of the Subsidiary group for the period ending Date 3. The items from Date 4 through Date 5 must be reported on separate income tax returns for each corporation. Any items from Date 6 or later for which the corporation was a member of the Parent consolidated group must be reported on the appropriate consolidated return of the Parent consolidated group.

The above extension of time is conditioned on the taxpayers' (Parent's consolidated group's, Subsidiary's, and its subsidiaries') tax liability (if any) being not lower, in the aggregate, for all taxable years impacted by the Election, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether Parent, Subsidiary, and its subsidiaries qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by Parent and Company Official. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under § 301.9100-1 to file the Election, penalties and interest that would otherwise be applicable, if any, still apply.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen  
Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)